



July 11, 2014

Jeff Killelea
Water Quality Program
Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

Dear Mr. Killelea,

The Port of Everett (Port) would like to thank the Department of Ecology (Ecology) for the opportunity to provide comments on the proposed 2015-2020 NPDES Industrial Stormwater General Permit (ISGP). We truly appreciate the efforts of the authoring agencies and staff members who developed the latest draft permit. While we are in support of the new (ISGP) permit, we respectfully submit that some of the new language should be evaluated and refined to address what we believe could create unintended consequences. For example, while the sampling and cleaning of catch basins on Puget Sound Cleanup Sites appears to be beneficial at face value, it could cause the unintended consequence of unfortunately exposing the owner to the possibility of unnecessary and costly third party lawsuits. That said our concerns are generally addressed in the detailed letters developed by the Washington Public Ports Association (WPPA) and Windward Environmental, LLC, which are attached hereto.

Additionally, on a related note, the Port would like to thank Ecology for your vision and support during the AKART study. The Port fully supports the outcomes reached through that effort.

Thank you for your consideration of the Port's comments.

Sincerely,

Brandon M. Whitaker
Environmental & Safety Specialist

Exhibits

July 11, 2014

Mr. Jeff Killilea, Water Quality Specialist
Washington State Department of Ecology
P.O. Box 47696
Olympia WA 98504-7696

Sent electronically to <mailto:industrialstormwatercomments@ecy.wa.gov>

Dear Mr. Killilea,

Thank you for the opportunity to review and comment on the 2015 – 2020 Draft Industrial Stormwater General Permit (ISGP). The Washington Public Ports Association (WPPA) appreciates the State of Washington Department of Ecology (Ecology)'s efforts to limit changes to the existing ISGP because many of our members and their tenants are in the process of implementing Level 3 Corrective Actions. Extensive revisions at this time would result in chaos and undermine Ecology's water quality goals.

As you know, ports are sub-divisions of the State of Washington, directed by locally-elected officials and most often located immediately adjacent to historically-impacted water bodies. These factors have shaped our members' long commitment to environmental stewardship and water quality at the facilities we operate. We are proud of our environmental track record and reputation for pragmatic action in the context of our mission to create jobs in Washington, helping to maintain our economic competitiveness with other regions of the country while limiting environmental impacts.

We respectfully offer the following comments on the Draft ISGP for Ecology consideration and recommendations where we see improvements can be made to both enhance the environment and support Washington trade. Our comments are listed in the order of our concern, beginning with the most important.

Section S6.C. Additional Sampling Requirements and Effluent Limits for Discharges to Certain 303(d)-listed Impaired Waters and Puget Sound Cleanup Sit

The Model Toxics Control Act (MTCA) provides the Toxics Cleanup Program the authority to regulate sediment cleanup actions for waters measured to exceed Washington Sediment Management Standards. An existing and robust regulatory process is in place to ensure that hazardous waste sites are identified and restored by the responsible parties. WPPA is concerned with the Section S6.C. provisions of the Draft ISGP because a linkage between these two complex programs serves neither Ecology nor regulated parties effectively.

The ISGP is a discharge permit. WPPA does not see a nexus between the "release to the environment of a hazardous substance (MTCA)" and "discharge of stormwater runoff (ISGP)" unless all stormwater runoff is to be defined as a release of a hazardous substance. By the logic of the Draft ISGP, ports would not need a stormwater discharge permit; they would need an

open-ended Agreed Order or Consent Decree for a cleanup action. It is hard to imagine that this is Ecology's intent.

As a matter of record, unless an industrial facility is currently subject to an EPA established TMDL, TSS has not been sampled at most industrial facilities. It is a leap from no regulatory requirements to setting an effluent limit under the Clean Water Act. As a result WPPA expects substantial confusion among permittees regarding effluent limits. Many simply will not be able to distinguish the difference between the timelines for corrective actions required by exceeding benchmarks and the immediate actions required for exceeding of an effluent limit. It is especially important in the context of Puget Sound Cleanup sites to note that any re-contamination that may occur is largely due to upstream municipal sources. Ecology's own published science makes this point clear. The expenditure of public and private resources demands that the actions taken are likely to have the greatest impact on clean water. The Draft ISGP is not transparent in its analysis of this issue.

The new Total Suspended Solids (TSS) effluent limit proposed in Ecology's Draft ISGP (Section S3.B.4.b.v.) is a significant departure from the existing ISGP, and from previous policy concerning the management of stormwater generally, that would significantly impact Washington's port community and all others regulated by the ISGP. We do not believe that departing from an approach to stormwater regulation based on benchmarks and best management practices (BMPs) can be justified as either beneficial to water quality or as a prudent policy decision. In any event, both the change to use of an effluent limit, and the effluent limit itself, appear arbitrary as Ecology has not provided data to justify a radical departure from the current approach.

Even if Ecology were to demonstrate that an approach to stormwater regulation based on effluent limits rather than benchmarks and BMPs was warranted, it would be far more logical to gather data on TSS impacts on sediment health prior to establishing an effluent limit for facilities that have never been asked to monitor for this parameter. In addition, the Environmental Impact Statement developed for this permit does not appear to have incorporated an analysis of this element. As a result, we ask for an open discussion of the data underpinning this permit requirement prior to including the in the ISGP.

WPPA would like to know the extent to which industrial sources are responsible for sediment contamination relative to non-point sources, especially in comparison to other sources. In an AKART-based regulatory scheme, establishing a new effluent limit prior to having a firm grasp on both how much it would cost dischargers to meet that limit and how much good it would do in receiving water sediments, cannot be legally justified. Moreover, we are interested in Washington's strategy to address the full spectrum of sediment contamination from all sources, to the extent that it exists. Finally, we would like Ecology to engage in a policy discussion concerning the use of effluent limits instead of BMPs and benchmarks, as effluent limits bring with them a variety of new concerns, including the prospect of citizen suits to enforce limits that may not be reasonably achievable.

Controlling sediments and solids in stormwater discharges from port facilities is currently required to be implemented through several applicable (mandatory) operational and structural

source control best management practices (BMPs). With these requirements in place, it is not clear why additional permit requirements are necessary.

Given the fact that sediment cleanup levels for certain hazardous substances such as PCBs are invariably set at levels that cannot be met in urban areas (e.g., “natural background” standards for PCBs), no matter how much cleanup and source control is provided, a requirement that all sediment contamination be prevented will itself be impossible to achieve. Again, in a regulatory system that is fundamentally based on the imposition of available and reasonable technologies, imposing a requirement that is likely impossible to achieve is both bad policy and legally unsupportable.

WPPA requests that Ecology step back from the proposed TSS effluent limits, and work with stakeholders to better explain the regulatory rationale and scientific basis for this new requirement, and to allow appropriate stakeholder input. In addition, to avoid differences in interpretation and to address the fact that it is impossible to “prevent” all off-site sedimentation, please replace all instances of “prevent” with “limit” or “minimize.”

Section S6.B. Limits on Eligibility for Coverage for of New Discharges to TMDL or 303(d)-listed Impaired Waters

This proposed change to the permit does not provide guidance necessary for permittees attempting to identify whether their facility discharges to an impaired water body. Ecology’s mapping tool provided on the Water Quality Assessment for Washington website (<http://apps.ecy.wa.gov/wats/>) does not provide adequate guidance on what information should be used to determine facility discharges. Ecology must provide the information or tools to permittees so to clearly and easily identify those sites that trigger additional permit requirements.

WPPA requests Ecology to provide the necessary mapping tools and make them readily available for permittees prior to inserting this requirement into the permit or drop the proposed requirement. Alternatively, Ecology could be responsible for providing clear and verifiable information to permittees regarding the site-specific status of discharges from permitted facilities as part of the permit Cover Letter issued by Department of Ecology.

Section S6.C.2. Permittees discharging to a Puget Sound Sediment Cleanup Site shall implement additional storm drain line-cleaning BMPs, solids sampling, and reporting....

Inspection and cleaning of facility conveyance systems is already required as an “applicable operational BMP” under BMP S417 (BMPs for Maintenance of Stormwater Drainage and Treatment Systems) in Chapter 2 of Volume IV of the SWMM.

It is reasonable to believe that most, if not all, of the impairments to the Ecology-identified water bodies were caused by historical use and legacy polluting prior to environmental regulation. There has been no scientific correlation between sediments found to be present in catch basins (CB)s and other facility conveyance systems and required cleanups.

Permittees are further exposed to potential liabilities related to sediment analysis related to third-party lawsuits and future cleanup efforts for materials that were captured in the CBs, not discharged, to surface water. Finally, CB sediments, proven to be retained onsite, are not representative of facility discharges and sampling captured sediments will only document the characteristics of material retained onsite. The cost of collecting and analyzing for COCs is very high for all facilities in Washington.

WPPA requests Ecology remove the chemistry/analytical requirement related to CB sediments. Our members are a source for a thorough technical discussion and suggested practices that may address Ecology's concerns in a different manner.

Section S4.B.2.c. Point of Discharge

As a practical matter, WPPA believes that the existing standard is appropriate for all discharges including those subject to numeric effluent limits. Ecology will receive many specific comments from our members that detail practical and employee safety related barriers to implementing this change, including lack of access under piers and tidal action that may preclude sampling during the winter months.

WPPA recommends that permittees be allowed to conduct all sampling requirements (benchmarks and effluent limit parameters) at locations identified by the permittee subject to approval by Ecology, as appropriate to comply with the meaning of "substantially identical".

Section S8.D.3 Submitting engineering reports to Ecology prior to installation of treatment facilities.

Permittees making multi-million dollar investments in stormwater treatment facilities have a vested interest to ensure the selected systems will result in compliance with the ISGP. The proposed change to the ISGP submitting the engineering report to Ecology is redundant and unnecessary given the typical process the Port is legally bound to follow to develop and redevelop new infrastructure.

Ecology should eliminate this requirement.

Section S9.E Reporting Violations

With regard to the revised reporting timeline, detailed reports take time to develop and most organizations require review of all permit related documentation. Permittees will simply require more than five days prepare and approve a detailed report that includes the steps planned to reduce, eliminate, and prevent future recurrence of noncompliance.

WPPA requests that Ecology not revise the existing permit-required notification language or timeline.

Conclusion

WPPA appreciates the opportunity to provide comments to Department of Ecology on the Draft Industrial Stormwater General Permit. We further appreciate the effort Ecology has made to work on the Marine Terminals AKART Guidance Manual with our member ports. We look forward to engaging in the reissuance of the ISGP with the agency in the future.

Sincerely,

Gerald J. O'Keefe
Assistant Director for Environmental Affairs



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July 11, 2014

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RE: Industrial Stormwater General Permit to be issued November 19, 2014 – Comments on Public Review Draft

Dear Mr. Killelea:

Windward Environmental LLC (Windward) appreciates having the opportunity to provide comments on the public comment draft of the Industrial Stormwater General Permit (ISGP) for stormwater discharges associated with industrial activities, which is scheduled to become effective January 1, 2015. Windward provides professional environmental and engineering consulting services to clients covered by the ISGP in the State of Washington, and we have first-hand knowledge of the challenges associated with permit implementation and compliance. The goal of our comments is twofold: to assist our clients in continuing to meet regulatory-driven expectations that are realistic and properly focused, and to help the Washington State Department of Ecology (Ecology) issue a final permit that is workable for all concerned.

COMMENTS

Section S3.B. Specific SWPPP Requirements

Newly proposed permit language in Section S3.B.4.b.i.3.b requires that maintenance, including the maintenance of treatment-related structures, be done in accordance with maintenance standards set forth in the applicable stormwater management manual or other guidance documents or manuals approved in accordance with Section S3.A.3.c. This language (and/or the language in Section S3.A.3.c) should be amended to specifically state that the maintenance of treatment facilities done in accordance with a stormwater treatment system's operation and maintenance (O&M) plan as submitted to Ecology per Section S8.D.3.c is also a means of demonstrating compliance.

Section S6. Discharges to Impaired Waters

Section S6.C. Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Cleanup Sites

Modifications to this section include new references to "discharges to Puget Sound Cleanup Sites" (or alternatively "Puget Sound Sediment Cleanup Sites"). Although these sites are listed in a footnote in the revised permit, Ecology should expect that there will be confusion regarding specific discharges to various operable units within these sites and/or "subareas" as identified through federal/state remedial investigation/feasibility study (RI/FS) processes and based on specific sediment contaminants of concern.

Section S1.A of the permit states “This statewide permit applies to *facilities* conducting *industrial activities* that *discharge stormwater* to a surface waterbody or to a *storm sewer* system that drains to a surface waterbody.” During the June 16, 2014, hearing hosted by Ecology, it was confirmed that this includes the existing and new provisions under Section S6. Ecology needs to be aware that those who discharge to other storm sewer systems (e.g., municipal MS4 systems) or to tributaries may not be aware that they are included under these new cleaning/sampling provisions (i.e., they may assume that this applies only to permittees with direct outfall discharges to impaired waters/cleanup sites). It would be helpful to clarify the applicability of the newly proposed provisions with additional text, specifically in Section S6. Because the new requirements will apply to all ISGP-permitted discharges to storm sewer systems that drain to these water bodies/sites, the following comments are particularly significant.

Section S6.C.1. Additional Effluent Sampling and Effluent Limits

At first glance, Table 6 (formerly Table 5) appears to contain minor changes, and the table title implies that these effluent limits are only applicable to discharges to 303(d)-listed waters; however, modifications to the language in Section S6.C.1, where the table is cited, state that the effluent limits are also applicable to discharges to a “Puget Sound Sediment Cleanup Site.” Among other concerns, this will impose the numeric effluent limit for total suspended solids (TSS) (which is an effluent limit, not a benchmark) of 30 mg/L on a much larger number of permittees. Under the current ISGP Appendix 4, the TSS effluent limit is applied to a total of 11 permittees. In contrast, the new draft Appendix 4 will likely result in the application of the TSS effluent limit to 179 permittees (the new draft Appendix 4 is not explicit in linking facilities to Table 6 parameters and is otherwise difficult to work with, please see additional comments on Appendix 4 below). The application of TSS limits to cleanup sites raises the concern that permittees not previously required to monitor TSS (or other newly assigned analytes) will have no data to determine whether they are in compliance and/or whether any of their existing best management practices (BMPs) (including treatment) will be sufficient to address the numeric limits for TSS or additional analytes in Table 6 that may be applied to their discharge. This creates a situation in which a permittee may be in immediate violation without any recourse (in contrast to the adaptive Level 1, 2, and 3 responses in place for benchmark exceedances).

We recommend that Ecology, at a minimum, defer the TSS effluent limit and instead provide a new compliance schedule so that permittees that discharge to cleanup sites have sufficient time to phase in the new TSS sampling and adapt and implement BMPs before being subject to violations of the TSS limit. Phasing in TSS sampling without an effluent limit would also allow permittees and Ecology to work together to determine whether TSS and the 30 mg/L effluent limit are appropriate thresholds and indicators of potential adverse impacts to cleanup sites (e.g., recontamination). In addition, it is not clear how well a particular permittee’s stormwater treatment system that meets the applicable benchmarks would fare against the 30 mg/L TSS effluent limit. Given such a broad application across many facilities and cleanup sites, correlations between turbidity, TSS, and cleanup site target contaminants would need to be established to prevent over- or under-conservative treatment or other management actions.

The last sentence in Section S6.C.1 states that Table 6 effluent limits supersede the Section S5 benchmarks. It is not clear what this means. Do the Section S5 benchmarks no longer apply and trigger the Level 1, 2, and 3 adaptive management requirements? Do exceedances of the Table 6 numeric limits trigger additional Level 1, 2, and 3 adaptive management requirements?

It should also be noted that new Footnote “f” to Table 6 states “Permittees discharging to a waterbody impaired for any sediment-quality parameter must cleanout storm drain lines per

S6.C.1.c.” It is assumed that the footnote is intended to reference new Section S6.C.2.a and thus should be corrected. However, that having been said, the text in Section S6.C.2.a indicates that these requirements are only applicable to cleanup sites, creating an inconsistency. Thus, the text in Section S6.C.2.a needs to state that it is also applicable to water bodies impaired for any sediment quality parameter, or, perhaps more appropriately, Footnote “f” to Table 6 should be deleted because it is redundant with requirements already stated in Section S6.C.2, and the storm drain cleaning mandate is not part of the effluent limit requirements outlined in Table 6.

Section S6.C.2. Permittees Discharging to Puget Sound Sediment Cleanup Site – Additional Storm Drain Line Cleaning BMPs, Solids Sampling, and Reporting

Section S6.C.2.a. Storm Drain Cleaning

With regard to waiver requests, will Ecology accept a lack of sampleable solids due to cleaning (as stipulated by Section S6.C.2.a and/or by a maintenance BMP already in the facility’s stormwater pollution prevention plan [SWPPP]) as an acceptable technical reason for not sampling storm drain solids? Ecology should consider a waiver for facilities that document a routine line inspection/cleaning BMP as part of their SWPPP. As an alternative, Ecology should consider not imposing this broad requirement in the ISGP and instead developing requirements for only those permittees that are in need of storm drain cleaning and solids sampling. Source control efforts by Ecology and/or local jurisdictions already focus on permittees that discharge to cleanup sites, and those source control efforts are the more appropriate mechanism for identifying and correcting problems without the need to impose broad requirements and then offer uncertain relief (in the form of waivers) in the ISGP. This could also prevent permittees from being exposed to citizen-initiated legal actions that could be prevented through cooperative source control activities, many of which are already underway.

Section S6.C.2.b. Storm Solids Sampling

It is understood that the rationale behind the requirement for permittees discharging to a Puget Sound sediment cleanup site to sample storm drain solids is as stated in the draft ISGP factsheet, “Ecology may require Permittees to evaluate the potential for the (stormwater) discharge to cause a violation of applicable (SMS) standards (WAC 173-204-400).” Nevertheless, there are concerns regarding the appropriateness and scope of this new solids sampling requirement, the list of required analytes, and issues associated with the interpretation and use of storm solids data to accurately identify real issues with regard to marine sediment quality.

First, the analyte list in Table 7 should be limited to include only those analytes that are associated with cleanup actions at Puget Sound sediment cleanup sites. In contrast to how the aqueous parameters listed in Table 6 (formerly Table 5) are applied, there are no similar provisions for specifying the individual storm solids analytes listed in Table 7 and limiting them to only those relevant to a specific sediment cleanup site. This should be addressed in the revised permit text.

Furthermore, are antimony, beryllium, and/or thallium responsible for (i.e., the target of) cleanup actions at any Puget Sound sediment cleanup sites? The 13 metals listed in Table 7 appear to be linked to EPA’s priority pollutant list for the water column (i.e., the aquatic life water quality criteria), and thus Table 7 includes several metals that are not included in the Washington State Sediment Management Standards (SMS) (WAC 173-220). Therefore, it is unclear how the requirement to analyze storm drain solids for antimony, beryllium, and thallium is directly related to any protection of sediment quality when there are no SMS criteria for these metals. In addition, freshwater SMS criteria have been developed for nickel and selenium, but marine criteria have not; therefore, it is unclear why permittees discharging to Puget Sound sediment cleanup sites (i.e.,

marine waters) would be required to sample storm drain solids for nickel or selenium. Also, Table 7 presents several technical issues:

- ◆ Metals quantitation limits (QLs) should be consistently specified as dry weight.
- ◆ “TBD” in the QL column does not provide the opportunity for public comment.
- ◆ Metals analysis methods should be checked (EPA 200.8 is typical for water).
- ◆ The last three sentences of Footnote 8 have potentially conflicting and redundant language regarding the handling of non-detects.
- ◆ In Footnote 8, alternative methods from 40CFR136 would be applicable only to water sample analysis (e.g., SW-486 methods appear to be a more appropriate reference for alternative storm drain solids analysis methods).

We are concerned that some entities may mistakenly assume that in all cases there is a direct link between the chemical characteristics of storm solids and the quality of sediment in the vicinity of associated stormwater outfalls, especially if the 303(d) listings are based on sediment bioassay failures (in which case the potential links between aquatic sediment bioassay and upland storm solids chemistry results are likely unknown and difficult, if not impossible, to establish). There are additional reasons why comparisons of storm solids and aquatic sediment quality would be problematic, including the use of physical treatment methods (e.g., settling and/or filtration) to remove solids prior to discharge, the presence of historical contaminants or deposited (i.e., imported) sediment with contaminants not originating from the discharger, and specific depositional/erosional conditions at a particular outfall. We believe that the requirement that all dischargers perform this sampling is over-reaching and that Ecology and others can evaluate this potential pathway on an as-needed basis under their current Superfund and Model Toxics Control Act (MTCA) authorities, including source control-related activities that are already in place for many sediment sites, or if necessary, through the issuance of orders applicable to specific permittees or issuance of individual National Pollutant Discharge Elimination System (NPDES) permits.

Section S9.E. Reporting Permit Violations

In Section S9.E.1.c, the time limit for submitting a detailed written report to Ecology has been decreased dramatically from 30 days to 5 days following a permit violation (or even sooner, if Ecology requests an earlier submission). The reduced time limit to prepare the report submittal will increase the difficulties experienced by all affected permittees, including dischargers to Puget Sound cleanup sites, which, as described above, are now expected to be in immediate compliance with the TSS effluent limit. In addition, the cause(s) of some monitoring exceedances are not always readily identifiable and may require follow-up assessments or actions, including source tracing, video inspection, etc. Permittees should continue to be allowed sufficient time to plan these assessments as well as to consult with contractors or experts, as needed, to develop steps that are cost-effective to address the noncompliance issues before committing to these actions in a written report. In many cases, 5 days is an insufficient amount of time to respond and Ecology should consider withdrawing this revision.

Appendix 4

It is difficult to use Appendix 4 to determine which facilities have the particular effluent limits listed in Table 6) with regard to 303d listings and Puget Sound sediment cleanup sites. Appendix 4 lists a number of facilities associated with Category 4A and 4B, but these categories are not 303d

listings by definition (only Category 5 is a 303d listing, and text in S6.C.1 indicates that Appendix 4 would be limited to Category 5 listings or a Puget Sound sediment cleanup site). It appears that many of the 4A and 4B listings are related to Puget Sound cleanup sites, but it is not clear that this is the case for each and every 4A and 4B listing, so instead of having to interpret 4A and 4B listings as being related to cleanup sites, Appendix 4 should contain a column to specifically identify the cleanup site. If that is the intended trigger, the table should be revised to be explicit and leave the 4A and 4B information as notes. Also, it should be made more clear that a 303(d) listing based on sediment bioassay does not trigger a requirement for bioassay effluent limits or bioassay monitoring.

In addition, the information columns in draft Appendix 4 table are inconsistent with those in the current ISGP Appendix 4 table. To be more clear and useful for permittees, the public, and Ecology, the water body and parameter(s) should be provided for each facility listing. The wide last column, Listing Association Comment, should be split to create separate relevant information columns, and the applicable Puget Sound sediment cleanup site information should be provided in its own column. The 303d listing identification (ID) should also be split out from the last column because the listing ID can be tracked to areas and datasets mapped by Ecology. Cleanup site names should be linked to specific areas that accurately define the intended applicability of the ISGP requirements, and clear maps would be helpful. Water body names should be checked for consistency with water bodies named in state water quality standards designated uses Table 602 (WAC 173-201A-602).

More Certainty Regarding AKART

The ISGP offers an opportunity to provide certainty regarding the definition of all known and available reasonable treatment (AKART); unfortunately, the newly proposed permit represents a missed opportunity. We recommend that Ecology consider adding language to the permit stating that if a permittee is at a Level 3 response, submits an engineering report for implementing treatment, and the proposed treatment is reviewed and accepted by Ecology, then once the treatment is installed and operating, the permittee is considered to have achieved AKART.

It is encouraging to see that on the website Ecology provided the draft ISGP along with the draft guidance manual for Washington State Marine Terminal AKART Guidance and ISGP Corrective Action prepared by the Washington Public Ports Association (WPPA). However, the WPPA guidance does not provide the same legal certainty of compliance as does the ISGP, nor is it intended to apply to facilities other than container and break-bulk terminals and waterfront log yards. We recommend that Ecology consider whether the WPPA guidance should qualify under Section S3.A.3.c as an equivalent manual, inasmuch as it is not currently referenced in the draft ISGP or the draft ISGP factsheet.

Thank you for considering our comments.

Sincerely,



Warren Hansen, PE
Windward Environmental LLC



Scott Tobiason, MSE
Windward Environmental LLC